IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 184 OF 2005

Smt.Sonabai Pandurang Shelar & anr. ... Appellants.

Versus.

Sakharam Bhiva Mali. ... Respondent.

Smt.Smita S.Shetkar for the Appellants.

Shri Kiran N.Joshi for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. Heard learned Counsel appearing for the parties.

2. Leave to amend the Memorandum of Appeal.

3. The Appeal is filed by the original Defendants. Decree is passed by the trial Court in favour of the Respondent/Plaintiff directing the Appellants/Defendants to hand over possession of the suit land after removing the encroachment. The decree has been confirmed by the Appellate Court.

3. The defence of the Appellants was that they have perfected their title by adverse possession in respect of the encroached portion. However, the plea of adverse possession was negatived by the learned trial Judge. The Appellate Court has also negatived said plea. The learned Advocate appearing for the Appellants submitted that the Appellants were in uninterrupted possession of

the suit property for more than 12 years. The learned Advocate for the Appellants submitted that considering the averments made in the plaint regarding trespass by the Appellants, plea of adverse possession is established. It was submitted that the suit house was reconstructed by the Appellants after obtaining grant under the Indira Awas Yojana. The learned Advocate relied upon the notes of evidence and pleadings and submitted that the suit was barred by limitation. The learned Advocate for the Respondent supported the impugned Judgment and Decree.

4. The only plea which was canvassed before the Appellate Court by the Appellants was of adverse possession. It is well settled position that mere long standing possession will not prove the plea of adverse possession. A perusal of the deposition of the Appellant No.1 shows that there is no assertion of hostile title at all. Mere long standing possession without assertion of hostile title is not enough to establish the plea of adverse possession. In my view the Courts below were right in holding that the plea of adverse possession is not established as there was no assertion of hostile title. There is no reason to interfere with the concurrent findings recorded on the said aspect.

5. Even assuming that the Government sanctioned funds

under the India Awas Yojana for reconstruction of the house on the encroached portion, the same will not create any equity in favour of the Appellants. The plea of bar of limitation will not be attracted as the suit is governed by Article 65 of the Limitation Act 1963. The period of limitation will start running on the date on which possession of the Appellant became adverse. As the plea of adverse possession is not established by the Appellants, the suit filed by the Respondent cannot be held as barred by limitation.

6. There is no merit in the Second Appeal. No substantial question of law arises. Hence the Second Appeal is dismissed with no order as to costs.

7. At this stage, the learned Counsel appearing for the Appellants prays that the ad-interim order passed by this Court may be extended for a reasonable time as the Appellants desire to approach the Apex Court. The said request is opposed by the learned Counsel for the Respondent. Considering the facts and circumstances of the case, the Decree for possession shall not be executed for a period of four months from today subject to the condition that the Appellants will not create any third party interests and will not part with possession of the disputed property. Judge.